IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 924 of 1995

with

MISC. CRIMINAL APPLICATION No 9985 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KEDARI NARSAIYA

Versus

STATE OF GUJARAT

Appearance:

MS BANNA DUTTA for Petitioner Appellants

MR RC KODEKAR, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 04/12/2003

ORAL JUDGEMENT (Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. Appellants - accused have filed this Appeal against the judgment and order of conviction and sentence dated 22.8.1995, passed by the learned Additional Sessions Judge, in Session Case No. 229 of 1994, whereby the appellant - accused No.1 Kedari Narsaiya came to be convicted for the offence under Sections 302, 304 (B) IPC and sentenced to suffer life imprisonment. He is also found guilty under Section 498 (A) IPC and sentenced to suffer 2 years rigorous imprisonment and to pay fine of Rs.250/- in default, to further undergo one month rigorous imprisonment. Accused No.2 - Satyama Narsaiya and appellant No.3 Narsaiya Chandraisa have been found guilty for the offence under Section 498(A) and sentenced to suffer six months simple imprisonment. However, both the appellants - accused came to be acquitted by the learned Judge for the offence under Sections 304 (B), 302 read with 114 IPC. This appeal was placed for Admission before the Division Bench of this Court (Coram: K.J.Vaidya (as His Lordship then was) and M.H. Kadri, JJ) on 27.9.1995. While admitting this Appeal, Their Lordships have also issued Notice for enhancement of sentence against the appellant - accused No.1 Kedari Narsaiya by a brief, reasoned order, which we would like to reproduce, which is as under :

"Admit.

1. Notice for enhancement of sentence be issued against appellant accused Kedari Narsaiya. Ordinarily, while issuing notice for enhancement of sentence, this court is not required to pass an elaborate order. However, having regard to the facts and circumstances of the case, we think it proper that the record be kept as to why and on what grounds we have thought it proper to issue the notice for enhancement of sentence.

2. Instant case is a case where Kedari Narsaiya appellant No.1, within a span of hardly two months of married life gave as many as 5 knife blows to his wife and killed her, allegedly on the ground of dowry demands not satisfied. It is quite understandable that persons with criminal antecedents and living on life of crimes, commit murders, sometimes even on a slightest pretext. But it is indeed too difficult to understand that a person who has

accepted a woman as the better half, that is to say, as a wife, all of a sudden changes his mood and kills her as an enemy. This psychic social disease of bride killing has become so rampant, chronic and cancerous and is spreading like AIDS that despite the Supreme Court and the High Courts coming down quite sharply and heavily upon crimes, and even the Parliament coming out with the special legislation called Dowry Prohibition Act, 1951; and amending incorporating sections like Sec. 304-B and 498A in Indian Penal Code and S. 1138 in Indian Evidence Act, the same has failed to deter husbands from killing their wives. In fact the crime record of all the States, particularly Gujarat and Uttar Pradesh, indicates that the ratio is the highest in Gujarat (Reference: KHIMIBEN W/o ARJANBHAI MEGHAJIBHAI VS. STATE OF GUJARAT AND ANOTHER, 1992 (1) GLR p. 261). When the legislation enacted by the Parliament has failed to have the deterrent effect upon husbands stopping them from killing their wives, we think the time has come where this court, as a constitutional functionary, is supposed to rise to the occasion by issuing notice for enhancement of sentence, that is to say, finally consider as to why in such cases, the husband should not be hanged. We believe that this notice of enhancement will definitely send the required signals and messages to all those concerned coward husbands, who arrogantly believe themselves to be brave in killing their wives. Prima facie, at this stage, it appears to us that but for sending the husbands to the gallows for killing their wives, unless they are done to death on seeing them in a compromising position with somebody else, the wives will not have any human existence in this world. Thus looking to the challenge of safety and security of the wives at their matrimonial homes, the best possible insurance appears to be the court sending the message to such husbands that in cases of killing wives, life for life can be the only order of sentence from the court that can be passed against them.

3. In view of the aforesaid observations, we feel that the time has indeed come, ripened calling upon the court to decide once and for all whether the husband killing the wife should be awarded extreme penalty of hanging? If the answer is, YES what can be the classes of those

cases. We make it clear that what is expressed here at the time of issuing notice for enhancement of sentence is just prima facie, and the court finally hearing the appeal shall decide the same on merits without being influenced by the observations made at this stage.

4. In this view of the matter, we issue notice for enhancement of sentence to Appellant No.1. The printing of paper book is dispensed with with a view to saving time and accordingly we direct the office of the Sessions Court to prepare hard bound first-class, clear, legible typed paper book of the entire trial proceedings, on or before 6.11.1995, and the record and proceedings of the case along with the paper book be forwarded to this court with the special messenger, so as to reach this court on or before the aforesaid date. The office is directed to place this matter on the final hearing board immediately on the receipt of the paper book and record and proceedings from the trial court.

5. Looking to the facts and circumstances of the case, Appellants No. 2 and 3 who are already released on bail, are ordered to be continued on same bail, fresh bonds."

2. We may state that this Appeal was listed on our running Final Hearing Board dated 11.11.2003 at Sl. No.6. The endorsement made shows that it is listed for the 44 times. Thus, though the Division Bench of this Court passed order on 27.9.1995 for expeditious hearing of this Appeal, the same could not be heard and disposed of till today, for some or other reasons. The incident in question stated to have taken place on the night of 20.7.1994 between 9.00 p.m. to 6.00 of 21.7.1994. The learned Judge found the appellant accused No.1 guilty for the major offence under Section 302 as well as Section 304 (B) IPC for committing murder of his wife Swarupa, by his judgment and order dated 22.8.1995. However, the learned Judge acquitted the accused Nos. 2 and 3, who are the parents of the appellant No.1 Kedari Narsaiya, for the offence under Section 302, 304(B) read with 113 IPC, however, he found both the appellant accused guilty for the offence under Section 498(A) IPC and sentenced them to suffer six months simple imprisonment. They were on bail during the pendency of the trail and for some time they remained in jail as under-trial prisoners. Therefore set off also given to them. The said judgment and order of conviction and sentence, passed by the

learned Judge, was jointly challenged by all the three appellants. While admitting the Appeal and issuing Notice for enhancement of sentence against appellant accused No.1 Kedari Narsaiya, appellants - accused No. 2 and 3, who are already on bail during the trial, ordered to be continued on bail on same bail, fresh bonds. All the three accused had finally filed this Appeal through their learned Advocate Shri J.B. Pardiwala. Later on, Ms.Banna Dutta has filed her appearance on behalf of all the three appellants - accused. At the time of hearing of this Appeal, she has brought to our notice that appellant - accused No.3 Narsaiya Chandreiya has expired on 6.10.1995. A photostat copy of the Death Certificate of appellant No.3 - Narsaiya Chandreiya is produced on record. Therefore, this Appeal against accused No.3 Narsaiya Chandreiya is required to be dismissed as having been abated, and it is required to be decided against the remaining appellants i.e. accused No.1 Kedari Narsaiya and accused No.2 Satyama Narsaiya, mother of accused No.1.

3. The prosecution case in brief as as under :-

Accused No.1 - Kedari Narsaiya, married deceased Swarupa, just two months before the date of the incident. At the time of their marriage, it was decided to give Rs. 50,000/- by way of dowry, however, only Rs. 15,000/- was paid to the accused before the marriage and the accused were assured that the remaining amount of Rs. 35,000/will be paid by Diwali. For not paying the remaining amount of Rs. 35,000/-, deceased Swarupa was taunted, beaten and tortured physically as well as mentally by all the three accused. At any time in the night of 20th/21st of July, 1994 between 9.00 p.m. to 6.00 a.m. the accused No.1 committed murder of his wife Swarupa by giving knife blow on her neck and the accused Nos. 2 and 3 abetted the accused No.1 for the same. Thus, therefore, they were charged for the offences under Section 302, 498(A), 304(B) read with Section 114 IPC.

4. Admittedly, this is a case of circumstantial evidence as there is no eye witness to the actual incident. From the evidence of Dr. Nakeshnath Tandan, the prosecution has proved that due to knife injuries received by the deceased Swarupa on her neck, she died unnatural death. Thus, it is a homicidal death.

Admittedly, the incident in question has taken place within two months of the marriage of accused No.1 Kedari Narsaiya with deceased Swarupa. It has clearly come on record in the evidence of the father of deceased

Swarupa that within 15 days of their marriage, his daughter and his son-in-law, started living separately from the parents of his son-in-law. As per their customs, when his daughter was brought to his house by his son-in-law accused No.1 Kedari Narsaiya, he immediately left the place after leaving his daughter there.

After returning to her house, on the third day, she was murdered in her house. Door of her house was not broken. Only Swarupa was staying in the room with her husband - accused Kedari Narsaiya. Door of the room was not broken. No doubt, it is the defence of the accused that someone entered in the house with a view to commit theft and when deceased Swarupa tried to resist, then she was done to death by unknown person by giving knife blow on her neck. However, the fact remains that nothing was stolen from the room of the deceased and all the ornaments, put on by the deceased were intact. Except the landlord, no one else was staying in the house, and it is not the case of the accused that the landlord had committed murder of his wife.

The accused tried to raise plea of alibi. During that night, as according to him, he had gone to the factory in the night shift. However, when the accused was arrested by the Police, the clothes put on by him were having blood stains, for which no explanation, whatsoever, was offered by him.

When the accused was arrested, some scratches on his body was found. They were nail marks and that was caused by his wife during the scuffle in the night at the time of incident. Doctor has confirmed this. But, the accused did not give any explanation about such nail marks.

FSL report shows that the blood found on the accused was of the deceased.

It was the accused, who produced muddamal knife, which was used for the commission of offence. Blood was found on it, and it is proved to be of the deceased.

As per the panchnama of scene of offence, the floor as well as wall of the room were having blood stains. In view of the above circumstances clearly established by the prosecution, only legitimate inference can be drawn in the matter is that, it is the accused alone, who has committed offence of murder under Section 302 and killed his wife Swarupa on the fateful night, and

no one else could have done it. Thus, the prosecution has amply proved the chain of circumstances. The learned Judge, after considering the entire prosecution evidence, has rightly come to the conclusion that the prosecution has proved its case against the accused No.1 Kedari Narsaiya that he has killed his wife on the night of 20th/21st of July, 1994 between 9.00 p.m. to 6.00 a.m.

5. This brings us to the sentence awarded by the learned Judge while convicting the accused No.1 Kedari for the offence under Section 302. The learned Judge has awarded life imprisonment. Therefore, when this Appeal came up for admission, the Division Bench of this Court was of the, prima facie, opinion that in such type of cases, extreme penalty of death sentence should have been awarded to the accused and, therefore, notice for enhancement of sentence was issued against the accused No.1 Kedari Narsaiya. We would have definitely considered the case for enhancement of sentence against accused appellant No.1 Kedari, if this Appeal had come immediately after its admission in 1995 or so. But, unfortunately, for some or other reasons, this Appeal could not be heard and finally disposed of till today i.e. 4th of December, 2003, i.e. after a period of more than 8 years. Under the circumstances, we are of the considered opinion that the Notice issued in Misc. Criminal Application 9985/2003 for enhancement of sentence against Appellant No.1 is required to be discharged, and accordingly, we discharge the Notice for enhancement of sentence against appellant No.1. Accordingly, MCA No. 9985/2003 stands dismissed.

6. This brings us to the order of conviction and sentence recorded by the learned Judge, convicting the appellant - accused No.2 Satyama, mother-in-law of the deceased Swarupa. There is enough evidence offered by the prosecution to show that there was dowry demand, and immediately after marriage, deceased Swarupa was taunted and beaten, mentally as well as physically, by her in-laws also, and because of not giving full dowry, she was made to stay separately with her husband within 15 days of her marriage.

7. Ms. Banna Dutta, learned Advocate appearing for both the appellants - accused in the case, was hardly in a position to assail the reasoning assigned by the learned Judge, for convicting the appellant accused No.1 for the offence under Sections 498(A), 304 (B) and 302 IPC and convicting the appellant - accused No.2 Satyama Narsaiya for the offence under Section 498(A) IPC. The learned Judge has awarded sentence of six months simple

imprisonment to appellant accused No.2 Satyama Narsaiya, which is just and proper. Therefore, no interference is required. She is on bail. Therefore, now she has to surrender.

8. In view of the above discussion, this Appeal filed by the appellant No.1 Kedari Narsaiya and appellant - accused No.2 Satyama Narsaiya stands dismissed on merits. Bail bonds of the appellant No.2 Satyama Narsaiya stands cancelled and she has to surrender forthwith. This appeal filed by the appellant accused No.3 Narsaiya Chandraiya stands dismissed as having been abated on his death.

(B.J. Shethna, J.)

(J.R. Vora, J.)

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